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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Petition of the Virginia State Corporation Commission)	
for Expedited Decision On Delegation Of Authority)	CC Docket No. 96-98
To Implement Number Conservation Measures)	File No. NSD-L-99-55

COMMENTS OF STARPOWER COMMUNICATIONS, LLC

Starpower Communications, LLC (Starpower), by counsel and pursuant to the Common Carrier Bureau's December 20, 1999 Public Notice,¹ hereby submits its Comments in the above-captioned proceeding.

I. INTRODUCTION

Starpower is a facilities-based provider of local and interexchange services. Starpower's ability to compete effectively in the local market, and to continue to serve the needs of existing customers in an efficient and cost effective manner, is in significant part dependent upon its ability to obtain non-discriminatory and timely access to numbering resources. As a result, Starpower is acutely aware of the devastating effects of the number shortages now being experienced in the four area codes in Virginia.

Starpower applauds the Virginia State Corporation Commission's (VSCC's) vigilance in acting to preserve and protect precious numbering resources. But the plenary numbering authority granted by Congress to the Federal Communications Commission (Commission)² should be delegated only in conjunction with certain safeguards designed to further the Commission's overall efforts to implement fully the pro-competitive, deregulatory goals of the Telecommunications Act.

¹ *Common Carrier Bureau Seeks Comment on the Virginia State Corporation Commission's Petition For Delegation of Additional Authority to Implement Numbering Conservation Measures*, NSD File No. L-99-5, DA 99-2846, Public Notice (rel. December 20, 1999). The Virginia State Corporation Commission's Petition is hereinafter referred to as "VSCC Petition."

² "The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." 47 U.S.C. § 251(e)(1).

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Though Starpower agrees with the VSCC that steps must be taken to ensure that carriers have nondiscriminatory access to telephone numbers, it urges the Commission to exercise considerable caution before delegating the broad authority sought by the VSCC in its petition. It is important that the Commission articulate specific guidelines pursuant to which the VSCC may exercise delegated numbering authority. At a minimum, these guidelines should not only be consistent with those outlined in prior orders delegating numbering authority to state commissions, but perhaps provide more explicit guidance to the state commission as to what it may or may not do with the authority delegated by this Commission.

The current number exhaust situation in California is perhaps the most effective way to illustrate the need for extreme case in responding to the VSCC's petition. On December 16, 1999, the California Public Utilities Commission (CPUC) suspended several pending overlay relief plans, along with accompanying mandatory 10-digit dialing requirements, in order to fully evaluate various number conservation measures which would either extend the life of the affected NPAs or eliminate the need for implementation of area code relief.³ In place of the overlays, the CPUC ordered implementation of thousands block pooling on a staggered basis throughout at least two MSAs.⁴ This abrupt measure, which interrupted years of planning and preparation pertaining to the implementation of area code relief, imposes significant burdens on carriers and could adversely affect their ability to provide services in the most efficient and cost effective manner. In short, this

³ See Decision 99-12-051, Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Rulemaking 95-04-043 (filed Apr. 26, 1995); Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service, Rulemaking 95-04-044 (filed Apr. 26, 1995) (*California Numbering Order*) at 9 (rel. Dec. 16, 1999).

⁴ *Id.* at 1.

decision highlights the need for the Commission to place clearly defined parameters around the VSCC's exercise of delegated authority.

While Starpower does not believe that the VSCC has any intention of halting existing area code relief plans,⁵ it would seem important as a matter of general policy to identify the precise parameters of the authority delegated to any state. If the Commission grants the VSCC's (or any other state commission's) requests for delegated numbering authority, it should narrowly define that authority, confirming that it is interim in nature and exercisable only so long as necessary. For example, the Commission should allow the VSCC to implement pooling only after it has finalized a "back up" plan that is ready to launch in the event that pooling is unsuccessful at delaying or eliminating the need for area code relief. The Commission should also consider that the implementation of pooling will be burdensome enough for all carriers, and especially challenging for smaller CLECs that may not have the resources to implement number conservation measures with the same degree of ease as incumbent local exchange carriers (ILECs). Thus, it should make clear to the state commissions that the implementation of multiple pooling trials – even on a semi-staggered basis – will not be permitted unless there is a clear and unmistakable finding that such implementation will not burden the industry.

⁵ For example, Starpower notes that the VSCC is currently implementing an area code overlay in the 703 NPA, and that area code relief is now being actively considered for the 540 and 804 area codes as well.

II. THE VSCC's REQUESTED AUTHORITY

A. Authority to Order The Submission Of Utilization And Forecast Data

Starpower could support the VSCC's request for authority to require all NXX code holders to report utilization and forecast information, depending upon the scope of this authority.⁶ However, the VSCC's petition fails to answer significant questions, such as how fill rates will be established and calculated, and whether lower fill rates will apply to smaller carriers with fewer numbering resources.⁷

If utilization and forecast data will be used as an information tool, if appropriate nondisclosure protections are in place, and if the forecasts are not treated as binding, it may very well be useful for the VSCC to have access to such information in identifying and planning for area code exhaust. However, if the information will be made publicly available or used to prevent carriers from obtaining subsequent NXX codes (either because the forecasts are binding or because the VSCC plans to establish a utilization threshold for future NXX codes), then Starpower strongly opposes allowing the VSCC to collect such information.

Starpower is concerned that the delegation of such numbering authority would generally be harmful because using utilization and forecast surveys to limit access to subsequent NXX codes would artificially limit the geographic scope of carriers' operations. If a carrier is denied the ability

⁶ VSCC Petition at 10.

⁷ See *Numbering Resource Optimization Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission's Rule Prohibiting Technology-Specific Area Code Overlays*, CC Docket 99-200, RM No. 9258, Notice of Proposed Rulemaking (rel. June 2, 1999) ("*Numbering NPRM*") at ¶ 68. ("[i]mposing the same utilization requirements on carriers with a small market presence as on those with a much larger presence may discourage market entry and competition, as well as diminish a smaller or newer carrier's ability to react to market demands.")

to obtain a NXX code to serve a second rate center simply because it was unable to attract enough customers in its first rate center, this creates an unjustified, and possibly unlawful, artificial barrier to entry. Such measures would invite unwarranted regulatory interference with carrier business plans. Starpower therefore urges the Commission to make sure that if the VSCC is given the authority to conduct utilization and forecast surveys, it is made clear that the VSCC may not use this information to deny a carrier NXX codes in the future, nor keep the information in any file available for public examination.

B. Authority To Order The Return Of Unused, Reserved Or Under-Utilized NXX Codes

Allowing the VSCC to reclaim unused NXX codes from carriers could provide a reasonable means of making more efficient use of numbering resources.⁸ While Starpower believes that this is a technically feasible solution, some questions remain relating to the scope and timing of such reclamation. First, it is not at all clear how the VSCC would implement a reclamation process. For example, the VSCC requests authority to order the return of thousand-number blocks by carriers with "excess" number resources.⁹ It alleges generally that other state commission studies have revealed that some carriers "may be holding excessive telephone numbers."¹⁰ The Commission should not "write a blank check" for the VSCC to use to reclaim NXX codes, particularly in circumstances where the support for the request is so vague.

⁸ VSCC Petition at 10.

⁹ VSCC Petition at 6.

¹⁰ *Id.*

Notwithstanding this lack of detail, it might be possible to construct a limited delegation of authority to the VSCC for the purposes of reclaiming unused NXX codes from carriers. For example, it is essential that carriers not be forced to return NXX codes prematurely if their business plans call for the use of those codes in the foreseeable future. Many CLECs place orders for NXX codes months in advance of entering a rate center in order to ensure that the numbering resources will be readily available once customer sales begin. CLECs may also decide to assign telephone numbers to a customer months in advance of serving that customer as part of their marketing efforts and business plans.

The Commission should help ensure the competitive neutrality of any rules the VSCC may adopt. If the VSCC is given authority to reclaim unused NXX codes, appropriate safeguards must be in place so that the state or numbering administrator is not given an inordinate amount of power to interfere unnecessarily with carriers' business plans. The Commission should make clear that any delegation of authority to the VSCC with respect to reclamation of NXX codes only applies to those codes that are truly unused, and not to codes that are simply determined by the state regulator to be somehow "unneeded" on a subjective basis.

C. Authority To Require Sequential Numbering Assignment

The VSCC seeks the authority to require that NXX code holders assign telephone numbers consecutively.¹¹ Requiring all code holders to assign their numbers consecutively could significantly reduce the availability of numbering services which consumers have come to rely upon, and thus

¹¹ See VSCC Petition at 7.

contravene the purposes of the Telecommunications Act. Starpower therefore urges the Commission to ensure that if this request is granted, the special need of CLECs for flexibility is first taken into account.

It is critical that CLECs be accorded a great deal of flexibility when it comes to assigning numbers to their customers. One of the most important options that new carriers offer the public is the ability to select telephone numbers to meet their unique business needs. In fact, this option is frequently at the heart of CLEC business plans.¹² In such cases, a rigid rule requiring sequential numbering assignment could literally put some carriers out of business.

The ability to provide numbers in the order customers desire is a valuable service that should not be denied outright to carriers that have come to rely upon it as a mainstay of their business. Thus, if the VSCC's request is granted, the Commission should require the VSCC to allow carriers to demonstrate that, in any particular situation, requiring sequential number assignment is not in the public interest. This is the only way to minimize the chances that this delegated authority would

¹² Many customers consider it a business necessity to be able to assign numbers to their customers in whatever order they desire, and some customers will only add services if they are able to obtain a specific desired number or series of numbers. Moreover, customers with multiple lines often demand that their telephone numbers be assigned in blocks that make logical sense. For example, if a customer needs fifty lines, it might request numbers between NXX-XX00 and XX50. But if carriers are required to assign numbers consecutively and the next number up is NXX-XX19, they will not be able to offer their customers the simplicity they have come to expect. Similarly, a customer switching to Starpower from Bell Atlantic may want to ensure that it can add sequentially to a block of numbers it is porting from Bell Atlantic so as to maintain internal consistency in terms of extensions. (For example, the customer may already use 4-digit extensions of 1000 through 1050 in a given NXX for internal routing purposes; it would not want to be forced to accept numbers 1000 through 1050 from Starpower in another NXX because of sequential numbering restrictions.)

result in fewer options for consumers, both in terms of types of services and the number of providers from which to choose.

D. Authority To Institute Mandatory Thousands-Block Number Pooling

The VSCC requests interim authority to implement a mandatory thousands block pooling regime.¹³ Recognizing that the Commission has already delegated such authority to numerous other states, Starpower urges the Commission to articulate clearly the limitations to be placed on the VSCC's delegated authority to order mandatory pooling. Moreover, the Commission should clarify how smaller CLECs such as Starpower are expected to handle the transition to a pooling environment. In any case, the Commission should set forth guidelines designed to restrain the VSCC's ability to interrupt pending area code relief measures in favor of implementing pooling, which may or may not act to extend the life of the NPA.

On a related note, Starpower requests that the Commission take a more forceful approach in prompting states to explore rate center consolidation prior to implementing pooling. In the *California Numbering Order* and numerous other similar delegation orders, the Commission has expressly encouraged state commissions "to consider consolidating rate centers prior to implementing pooling." As the Commission has aptly observed, "Fewer, larger pools logically increase the effectiveness of thousands-block pooling."¹⁴ Yet Starpower is not aware that any state has stopped in the wake of receiving delegated authority to consider how pooling – and number optimization generally – might actually be enhanced by rate center consolidation. Pooling should

¹³ VSCC Petition at 8-9.


¹⁴ *California Numbering Order* at ¶ 21.

not be viewed as an absolute solution for number optimization concerns, and the Commission should take more concrete steps to ensure that the state commissions look at rate center consolidation as a real alternative.

III. CONCLUSION

Starpower commends the VSCC for taking a proactive approach to resolving the problems of NXX code exhaust. Several of the proposals set forth by the VSCC may ultimately assist in making much more efficient use of existing number resources. As demonstrated in other jurisdictions, however, granting requests for delegated numbering authority without articulating appropriate boundaries regarding the scope of that authority can very well lead to developments that may not serve the public interest in the long run. Therefore, if the Commission grants the VSCC's petition, it should do so only in conjunction with specific, carefully defined guidelines designed to ensure that the authority is not exercised to the unfair disadvantage of smaller carriers, and that the number conservation measures implemented by the VSCC minimize consumer confusion and frustration.

Respectfully submitted,



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CERTIFICATE OF SERVICE

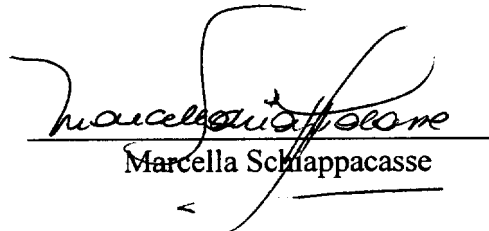
I, Marcella Schiappacasse, hereby certify that I have on this 20th day of January, 2000 served copies of the foregoing "**COMMENTS OF STARPOWER COMMUNICATIONS, LLC**", via overnight delivery, on the parties listed below:

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